

H.850

Introduced by Representative Browning of Arlington

Referred to Committee on

Date:

Subject: Conservation and development; judiciary; toxic substances; strict  
liability for releases; medical monitoring damages

Statement of purpose of bill as introduced: This bill proposes to hold any  
person who releases a toxic substance strictly, jointly, and severally liable for  
any harm resulting from the release. The bill also proposes to establish a  
private right of action for medical monitoring damages incurred due to  
exposure to a toxic substance.

An act relating to liability for toxic substance exposures or releases

It is hereby enacted by the General Assembly of the State of Vermont:

\* \* \* Strict Liability; Toxic Substance Release \* \* \*

Sec. 1. 10 V.S.A. chapter 159, subchapter 5 is added to read:

Subchapter 5. Strict Liability for Toxic Substance Release

§ 6685. DEFINITIONS

As used in this subchapter:

(1) "Harm" means any personal injury or property damage.

1           (2) “Release” means any intentional or unintentional, permitted or  
2           unpermitted, act or omission that allows a toxic substance to enter the air, land,  
3           surface water, groundwater, or any other place where the toxic substance may  
4           be located.

5           (3) “Toxic substance” means any substance identified as toxic or  
6           hazardous under State or federal law, or mixture thereof, or any other  
7           substance that has been shown at any time to cause increased risk of disease.

8           § 6686. LIABILITY FOR RELEASE OF TOXIC SUBSTANCES

9           (a) Any person who releases a toxic substance shall be held strictly, jointly,  
10          and severally liable for any harm resulting from the release.

11          (b) Any person held liable under subsection (a) of this section shall have  
12          the right to seek contribution from any other person who caused or contributed  
13          to the release. The right to contribution under this subsection shall include the  
14          right to seek contribution from a chemical manufacturer that failed to warn a  
15          person of a toxic substance’s propensity to cause the harm complained of.

16          (c) Nothing in this section shall be construed to supersede or diminish in  
17          any way existing remedies available to a person at common law or under  
18          statute.

\* \* \* Medical Monitoring Damages \* \* \*

Sec. 2. 12 V.S.A. chapter 219 is added to read:

CHAPTER 219. MEDICAL MONITORING DAMAGES

§ 7201. DEFINITIONS

As used in this chapter:

(1) “Disease” means any disease, ailment, or adverse physiological or chemical change linked with exposure to a toxic substance.

(2) “Exposure” means ingestion, inhalation, contact with the skin or eyes, or any other physical contact.

(3) “Medical monitoring damages” means the cost of medical tests or procedures and related expenses incurred for the purpose of detecting latent disease resulting from exposure.

(4) “Toxic substance” means any substance identified as toxic or hazardous under State or federal law, or mixture thereof, or any other substance that has been shown at any time to cause increased risk of disease.

§ 7202. MEDICAL MONITORING DAMAGES FOR EXPOSURE TO TOXIC SUBSTANCES

(a) Any person may recover medical monitoring damages from exposure to a toxic substance resulting from another’s tortious conduct with or without a present injury or disease.

1       (b) To recover medical monitoring damages, a person must prove by a  
2       preponderance of the evidence each of the following:

3               (1) The person was exposed to a toxic substance.

4               (2) There is a probable link between exposure to the toxic substance and  
5       a disease or diseases.

6               (3) The person's exposure is the result of another's tortious conduct,  
7       including negligence, battery, strict liability, trespass, and nuisance.

8               (4) The person's exposure to the toxic substance increases the risk of  
9       developing a disease. A person does not need to prove that the disease is  
10      certain or likely to develop as a result of the exposure.

11              (5) Diagnostic testing is reasonably necessary. Testing is reasonably  
12      necessary if a physician would prescribe such testing for the purpose of  
13      detecting or monitoring the disease.

14              (6) Medical tests or procedures exist to detect the latent disease.

15              (c) A court shall either place the award of medical monitoring damages into  
16      a court-supervised program administered by a medical professional or award  
17      lump sum damages.

18              (d) If a court places an award of medical monitoring damages into a court-  
19      supervised program pursuant to subsection (c) of this section, the court shall  
20      also award attorney's fees and costs to the plaintiff.

6 \* \* \* Effective Date \* \* \*

7           Sec. 3. EFFECTIVE DATE

8 This act shall take effect on July 1, 2018.